

DOCKET NO.: UPN-4365/M2166-USNP-C01
Application No.: 10/761,606
Office Action Dated: May 13, 2005

**PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116**

REMARKS

Entry of this response and reconsideration and allowance of the above-identified patent application are respectfully requested. Claims 1-23 were rejected in the office action. Claims 1, 11, 12, 13 and 22 have been amended. No claims have been added or canceled. Therefore, following entry of the present response, claims 1-23 will remain pending in the present application.

This application claims priority under 35 U.S.C. § 119(e) from provisional application no. 60/171,519, filed December 22, 1999. Examiner is respectfully requested to acknowledge priority under 35 U.S.C. § 119(e) in the next communication.

Claims 1-23 stand rejected under 35 U.S.C. 103 (a) as being unpatentable over U.S. Patent 6,379,006 to Eikelboom *et al.* ("Eikelboom") in view of U.S. Patent 5,867,170 to Peterson ("Peterson"). More specifically, the office action suggests that Eikelboom uses "[a] pair of toggling mirrors [to] toggle every alternate frame to image the surface of the ocular fundus from slight different positions with substantial overlapping of image areas." (*Office Action dated May 13, 2005* at p. 2). The office action then further suggests that the images produced in Eikelboom may be compared as taught by Peterson.

Applicants would like to thank Examiner Manuel for agreeing to conduct a telephonic interview on May 31, 2005 to discuss the present application, and specifically claim 1 with respect to the cited prior art. Although agreement was not reached to the precise claim language, the discussion was helpful in further facilitating prosecution of the present application.

Applicants have amended the claims to explicitly claim that which previously was implicit; namely, that the images that are captured and compared in the present embodiment

are images that are different from one another. As will be discussed, this is to be distinguished from the stereoscopic image captured by Eikelboom and the positive/negative image taught by Peterson.

The presently claimed embodiment provides a technique for judging changes in the components of an eye that occur over some period of time that is relevant to the detection of human diseases. In particular, an embodiment of the present invention includes, *inter alia*, superimposing two different digital images of the components of the eye. Because these different images typically are taken over time and perhaps by different equipment, at least one of the digital images is processed so that the images may be compared.

For example, one of the digital images may be registered, warped and/or aligned to facilitate comparison with the other digital image. In this way, distinct images of the eye, perhaps taken at various intervals in a patient's lifetime using different equipment, may be compared to detect any changes in the eye indicative of disease. By processing the image, the embodiment of the present invention permits subsequent comparison of the eye regardless of the different circumstances of each image, for example different magnification and perspective.

Eikelboom, however, does not contemplate capture of different images, as contemplated by the presently claimed embodiment. Instead, in the context of the present embodiment, Eikelboom captures a single, stereoscopic image. As the office action correctly notes, Eikelboom creates this stereoscopic image using "togglng mirrors" that capture a single image of the eye "from slightly different positions with substantial overlapping of image areas." (*Office Action dated May 13, 2005* at p. 2). By capturing different angles, but of the same single image, Eikelboom creates the "stereo" visual effect in order to produce a

three dimensional representation of the ocular fundus. However, the Examiner is respectfully requested to recognize the difference between the single, stereo image produced by Eikelboom, and the different images in the presently claimed embodiment.

In other words, Eikelboom simply discusses acquiring a digital image of an eye using an ophthalmoscope. There is no discussion in Eikelboom of capturing a second image and conducting the type of comparison contemplated by the presently claimed embodiment.

Similarly, Peterson takes a single color positive image, and from that image creates a color negative by inversion. In other words, Peterson creates its second image directly from its first image. Therefore, by teaching the use of duplicate images instead of different images that require processing contemplated by the presently claimed embodiment, Peterson teaches away from capturing such images for subsequent comparison.

Moreover, and as a result of the images that Peterson captures, it should be appreciated that the objective of Peterson is to provide a graphic arts design technique used in magazines and books that creates more “vivid colors as well as a three dimensional appearance” using the positive and negative image. In other words, Peterson’s technique is used for aesthetic purposes to achieve an artistic effect that allegedly had not been able to be achieved before. Again, as with Eikelboom, there is no discussion in Peterson that suggests that the positive image and negative image are captured in order to facilitate comparison of the images.

Accordingly, applicants respectfully request withdrawal of the rejection of claims 1-23 over Eikelboom in view of Peterson.


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CONCLUSION

In view of the foregoing, applicants respectfully submit that the claims are allowable and that the present application is in condition for allowance. Reconsideration of the application and an early Notice of Allowance are respectfully requested. In the event that the Examiner cannot allow the present application for any reason, the Examiner is encouraged to contact the undersigned attorney, Vincent J. Roccia at (215) 564-8946, to discuss resolution of any remaining issues.

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